

Before the  
Federal Communications Commission  
Washington, D.C.

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In the Matter of	)	
	)	
Policy and Rules Concerning the	)	
Interstate, Interexchange Marketplace	)	
Implementation of Section 254(g) of the	)	CC Docket No. 96-61
	)	
PCS PrimeCo Personal Communications, LP	)	
Motion for Stay of Enforcement of	)	
Section 64.1801 of the Commission's Rules	)	CCB/CPD 97-54
	)	

**COMMENTS OF OMNIPOINT COMMUNICATIONS INC.**

Omnipoint Communications Inc. ("Omnipoint"),<sup>1</sup> by its attorneys, files these comments in response to the Commission's September 25 Public Notice<sup>2</sup> in the above-captioned proceeding. Omnipoint strongly urges the Commission to adopt rules that allow CMRS operators the maximum price flexibility. New entrant CMRS operators like Omnipoint compete in the telecommunications market with many other carriers, including incumbent cellular providers, other PCS operators, SMR operators, incumbent local exchange carriers, and new entrant wireline providers (e.g., CAPs, CLECs, etc.). There is simply no reason to constrain a new entrant CMRS operator's pricing plans. In

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<sup>1</sup> Omnipoint and its affiliates hold broadband PCS licenses in many major metropolitan U.S. markets including New York City, Philadelphia, PA, Boston, MA, and Miami, FL. Omnipoint and its affiliates currently provide service in the New York, Philadelphia, and Wichita markets.

<sup>2</sup> "Expedited Pleading Cycle Established for PrimeCo's Motion for Stay of Enforcement of Rate Integration Requirements as Applied to CMRS Providers," Public Notice, DA 97-2086 (rel. Sept. 25, 1997).

addition, broadband PCS operators must have pricing flexibility, including the flexibility to define their own local calling and service areas, in order to compete with other carriers and to add geographic locations as they are built out.<sup>3</sup>

The goal of vibrant competition for wireless interstate telecommunications is best served in this proceeding by leaving pricing and calling area plan decisions to the marketplace. At a minimum, the Commission should avoid regulation that prevents a PCS operator from reacting to the price competition it finds in the marketplace. For these reasons, Omnipoint supports PCS PrimeCo's stay motion.

### **DISCUSSION**

Omnipoint believes that providing maximum flexibility for CMRS new entrants' pricing and local calling area decisions is fully consistent with the policy goals of Section 254(g) of the Communications Act. As the Commission noted in its Rate Integration Reconsideration Order, "CMRS is primarily a telephone exchange and exchange access service."<sup>4</sup> However, it is essential to understand that CMRS calling plans and areas are vastly different than the incumbent LEC traditional exchange areas.<sup>5</sup> This is especially true for broadband PCS, which the Commission licenses on a multi-state MTA and BTA

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<sup>3</sup> Omnipoint and other CMRS operators are currently in the process of aggressive network construction in many of its licensed service areas. Therefore, even today's defined CMRS local calling areas will develop and change as operators expand the geographic range of their networks and learn more about the competitive market for their services.

<sup>4</sup> First Memorandum Opinion and Order on Reconsideration, CC Dkt. No. 96-61, at ¶ 18 (rel. July 30, 1997) ("Rate Integration Reconsideration Order").

<sup>5</sup> This inherent difference between CMRS and wireline calling areas was also recognized by the Commission in the Local Competition Order, when it established MTAs as the CMRS "local service areas" for purposes of reciprocal compensation. First Report and Order, CC Dkt. No. 96-98, 11 FCC Rcd. 15499, 16014 (1996), *rev'd in part, on other grounds*, Iowa Utilities Bd. v. FCC, No. 96-3321 (8th Cir. July 18, 1996).

area basis. These large multi-state PCS regions were adopted in order "to promote the rapid deployment and ubiquitous coverage . . . follow[ing] the natural flow of commerce,"<sup>6</sup> to "spur competition,"<sup>7</sup> to "facilitate regional and nationwide roaming; [and to] allow licensees to tailor their systems to the natural geographic dimensions of PCS markets."<sup>8</sup> The Commission's PCS licensing scheme was deliberately intended to provide operators with maximum flexibility to aggregate multiple BTA or MTA licenses using a single network, thereby providing the public with competitive alternatives to the incumbent cellular and LEC exchange services. Likewise, PCS operators also have the flexibility to deploy more than one network across a contiguous set of licenses, and to compete against different incumbent exchange operators in different markets.

Omnipoint believes that Section 254(g) of the Communications Act was never intended to constrain PCS operators from making market-based pricing and calling area decisions, including the ability to set a calling area plan that covers more than one state. As explained by the House Conference Committee Report, Section 254(g) was intended to "ensure that subscribers in rural and high cost areas throughout the Nation are able to continue to receive both intrastate and interstate interexchange services at rates no higher than those paid by urban subscribers."<sup>9</sup> Therefore, Section 254(g) is properly understood as a regulatory safeguard to prevent traditional wireline long-distance operators from charging relatively higher prices to rural customers. It should never apply to the rates

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<sup>6</sup> Memorandum Opinion and Order, GN Dkt. No. 90-314, 9 FCC Rcd. 4957, 4986 (1994).

<sup>7</sup> Id. at 4987-88.

<sup>8</sup> Second Report and Order, GN Dkt. No. 90-314, 8 FCC Rcd. 7700, 7732 (1993).

<sup>9</sup> H. Conf. Rep. No. 104-458, 104th Cong. 2d Sess. at 132.

charged by a CMRS operator with a calling area that covers more than one state or more than one MTA. Likewise, a CMRS operator (and its CMRS affiliates) that operate wireless systems in several different markets should not be straight-jacketed into uniform rates across disparate markets.

In fact, any Commission rule that requires uniform CMRS rates is likely to impede the development of competitive CMRS offerings in rural areas. C.f., 47 U.S.C. § 309(j)(3)(A) (Commission is directed to allocate CMRS licenses "for the rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas . . ."). Especially as PCS operators are now deploying and building out competitive services in many areas of the country, a regulatory intrusion into the market-based process of wireless pricing will seriously disincite operators from building out rural markets. Congress could not have intended for Section 254(g) to have such a deleterious effect on rural Americans.

Moreover, the imposition of CMRS rate uniformity requirements would be completely at odds with the Commission's decision to deregulate CMRS rates.<sup>10</sup> As the Commission noted, "in a competitive market, market forces are generally sufficient to ensure the lawfulness of *rate levels*, *rate structures*, and terms and conditions of service set by carriers who lack market power."<sup>11</sup> The introduction of CMRS, and its competitive impact on interstate wireless telecommunications, is due in no small part to the deregulatory, pro-competitive policies that the Commission has forged; it would be a serious misstep to now regulate the CMRS industry away from pricing flexibility.

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<sup>10</sup> Second Report and Order, GN Dkt. No. 93-252, 9 FCC Rcd. 1411, ¶¶ 173-182, 250 (1994)

<sup>11</sup> Id. at ¶ 173 (emphasis added).

**CONCLUSION**

Omnipoint believes that the Commission should more carefully consider the regulatory impact of rate uniformity before it implements any rules that restrict CMRS pricing or calling plan area flexibility.

Respectfully submitted,

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